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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,102	01/31/2001	Lisa S. Martin	DC-02830	1750

33438 7590 12/08/2009

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EXAMINER	
GORT, ELAINE L	

ART UNIT	PAPER NUMBER
3687	

NOTIFICATION DATE	DELIVERY MODE
12/08/2009	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LISA S. MARTIN,
TRACY A. MASSON,
MATTHEW S. SNYDER, and
PHILIP F. MALLORY

Appeal 2009-011642
Application 09/773,102
Technology Center 3600

Decided: December 4, 2009

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Lisa S. Martin, Tracy A. Masson, Matthew S. Snyder, and Philip F. Mallory (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 1 and 3-18, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION[1]

We AFFIRM.

THE INVENTION

The Appellants invented a way for ordering materials from suppliers (Specification 2:9).

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

> 1. A method for a manufacturer to order material, comprising:
>
> [1] considering a quantity of a material available from a plurality of suppliers via a computer system;

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[1] Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed December 5, 2008) and the Examiner's Answer ("Ans.," mailed March 5, 2009).

[2] considering a quantity of a material available from a plurality of supplier logistics centers via a computer system;

[3] identifying a supplier or a supplier logistics center to receive an order for the material based upon

the considering the quantity of material available from the plurality of suppliers and

the considering the quantity of materials available from the plurality of supplier logistic centers; and

[4] sending electronically an order for the material to the supplier or supplier logistics center identified to receive the order

[4a] wherein the material is not ordered until the manufacturer realizes a demand,

[5] wherein

the manufacturer realizes the demand for the material

after orders are received from customers,

fulfilling the orders requires

assembling products, and

assembling the products requires

the material.

THE REJECTION

The Examiner relies upon the following prior art:

Shavit	US 4,799,156	Jan. 17, 1989
Goss	GB 2,336,003 A	Oct. 6, 1999

Claims 1 and 3-18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Goss and Shavit.

ARGUMENTS

The Appellants argue independent claim 1 and rely on these arguments for the dependent claims. The Appellants separately argue independent claims 7 and 13 together and rely on these arguments for the dependent claims. Accordingly we treat claims 1 and 3-6 as being argued as a group and claim 1 as representative of the group, and claims 7-18 as being argued as a group and claim 7 as representative of the group. 37 C.F.R. § 41.37(c)(1)(vii) (2008).

The Examiner found that Goss described the build to order nature of manufacturing and Shavit described the electronic communications of claim 1. The Appellants contend that the art fails to describe limitation [4a] because within Goss, it is assumed that the components needed to prepare the kit trays are already present within the manufacturing facility. App. Br. 5:Top ¶. The Appellants also contend that the art fails to describe limitation [4] because Shavit's request for quote would not necessarily include quantities desired. App. Br. 6:Top ¶.

Claim 7, as with claim 1, requires identifying a supplier or a supplier logistics center to receive an order for material based upon the considering the quantity of material available from the plurality of suppliers and the considering the quantity of materials available from the plurality of supplier logistic centers. The Appellants argue neither reference describes this or assembling a computer system. App. Br. 7.

ISSUES

The issue of whether the Appellants have sustained their burden of showing that the Examiner erred in rejecting claims 1 and 3-18 under 35 U.S.C. § 103(a) as unpatentable over Goss and Shavit turns on whether Goss describes ordering when a demand is received as in limitation [4a].

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Goss

01. Goss is directed to manufacturing and assembling computer systems in a build to order environment. Goss 1:6-8.

02. Goss describes that responsive to orders received, kit trays are prepared that each hold the components needed to build an ordered product. Goss 4:4-6.

03. Goss describes how its kitting unit 130 receives computer system components from a truck delivering components just in time. Goss 9:16-18.

Shavit

04. Shavit is directed to interactive communications and processing of business transactions between buyers, wholesalers, distributors, suppliers, agents, and financial and freight carrier services. Shavit 1:5-12.

05. Shavit describes how a distributor may offer its customers an on-line interactive, convenient and consistent way to place orders or conduct any other business with the distributor. This provides buyers with a reliable and consistent way of reaching multiple sources to shop for goods and electronic access to carriers for shipping. Shavit 6:23-43.

06. Shavit describes entering purchase orders electronically and also electronically converting requests for quotes to purchase orders as is. Shavit 13:51-64.

07. Shavit's bidding process permits both pricing an RFQ and confirming the availability of the products as requested. Shavit 15:61-63.

Facts Related To The Level Of Skill In The Art

08. Neither the Examiner nor the Appellants have addressed the level of ordinary skill in the pertinent arts of systems analysis and programming, manufacturing systems design, or just in time systems design. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) ("[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error 'where the prior art itself reflects an appropriate level and a need for testimony is not shown'") (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985).

Facts Related To Secondary Considerations

09. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Obviousness

A claimed invention is unpatentable if the differences between it and the prior art are "such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966).

In *Graham*, the Court held that that the obviousness analysis is bottomed on several basic factual inquiries: "[(1)] the scope and content of the prior art are to be determined; [(2)] differences between the prior art and the claims at issue are to be ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved." *Graham*, 383 U.S. at 17. *See also KSR*, 550 U.S. at 406. "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR*, 550 U.S. at 416.

ANALYSIS

As to the Appellants' first argument that the art fails to describe limitation [4a] because within Goss, it is assumed that the components needed to prepare the kit trays are already present within the manufacturing facility, the Examiner found that Goss describes using just in time inventory supply. Ans. 6. We agree with the Examiner. Goss describes how its

kitting unit receives computer system components from a truck delivering components just in time. FF 03.

As to the second argument that the art fails to describe limitation [4] because Shavit's request for quote would not necessarily include quantities desired, the Examiner responded that Shavit demonstrates the notoriety of electronically sending an actual order. Ans. 7. We agree with the Examiner. Shavit describes placing orders electronically with multiple sources to shop for goods. FF 05. Such orders would necessarily include quantities desired as orders are firm offers ready for acceptance, and Shavit further describes how requests for quotes also have all of the information needed for an order. FF 06.

As to the argument that the references fail to describe identifying suppliers based on considering material availability, the Examiner found that the consideration is notoriously well known as evidenced by Shavit and that assembling a computer system is described by Goss. Ans. 4-5. We agree with the Examiner. Goss is directed to manufacturing and assembling computer systems in a build to order environment. FF 01. Shavit considers material availability in identifying suppliers to solicit quotes from. FF 07.

CONCLUSIONS OF LAW

The Appellants have not sustained their burden of showing that the Examiner erred in rejecting claims 1 and 3-18 under 35 U.S.C. § 103(a) as unpatentable over Goss and Shavit.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1 and 3-18 under 35 U.S.C. § 103(a) as unpatentable over Goss and Shavit is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

mev

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